The petition for a writ of certiorari was denied on November 13, 1950. *Land* v. *Dollar*, 340 U.S. 884. The Court's action was thus taken within the present Term but more than 15 days prior to this petition for rehearing.

This Court has very frequently granted petitions for rehearing filed within the Term but more than the 25 or 15 days after the initial denial of the petition for a writ of certiorari prescribed by Rule 33. This action has been taken both before and after the 1947 revision of Rule 33 (332 U.S. 857).[1]

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[1] See, *e.g.*, *Triplett* v. *Lowell*, 296 U.S. 621, 570, 297 U.S. 638; *New York City* v. *Goldstein*, 299 U.S. 583, 522; *Stone* v. *White*, 296 U.S. 596, 299 U.S. 622, 300 U.S. 643, 301 U.S. 532; *U. S. ex rel. Girard Co.* v. *Helvering*, 299 U.S. 603, 300 U.S. 643, 301 U.S. 540, 542; *Kellogg Co.* v. *National Biscuit Co.*, 302 U.S. 733, 777, 304 U.S. 586, 305 U.S. 111, 115-116; *Fairbanks* v. *United States*, 305 U.S. 605, 667, 306 U.S. 436, 438; *Maytag Co.* v. *Hurley Co.*, 305 U.S. 599, 306 U.S. 666, 307 U.S. 243; *White* v. *Texas*, 308 U.S. 608, 309 U.S. 631, 310 U.S. 530; *Republic Steel Corp.* v. *Labor Board*, 309 U.S. 684, 310 U.S. 655, 311 U.S. 7; *Crane-Johnson Co.* v. *Commissioner*, 308 U.S. 627, 309 U.S. 692, 311 U.S. 54; *New World Life Ins. Co.* v. *United States*, 308 U.S. 612, 310 U.S. 654, 311 U.S. 620; *Drivers Union* v. *Meadowmoor Co.*, 308 U.S. 596, 637, 310 U.S. 655, 312 U.S. 287; *Automatic Devices Corp.* v. *Sinko Tool Co.*, 311 U.S. 673, 312 U.S. 711, 314 U.S. 94; *Schriber Co.* v. *Cleveland Trust Co.*, 303 U.S. 639, 667, 304 U.S. 587, 305 U.S. 47, 50; *U. S. ex rel. Robinson* v. *Johnston*, 314 U.S. 675, 316 U.S. 649; *Martin* v. *City of Struthers*, 317 U.S. 589, 318 U.S. 739, 319 U.S. 141, 142; *R. Simpson & Co.* v. *Commissioner*, 317 U.S. 677, 319 U.S. 778, 321 U.S. 225, 229; *Panhandle Co.* v. *Power Commission*, 323 U.S. 700, 808, 324 U.S. 635; *Sioux Tribe* v. *United States*, 329 U.S. 758, 684, 680, 685; *Zap* v. *United States*, 326 U.S. 777, 802, 328 U.S. 624, 329 U.S. 824, 330 U.S. 800; *Estin* v. *Estin*, 332 U.S. 760, 840,

The conclusion seems evident that the Court has not divested itself of power or right to consider petitions for rehearing filed within the Term, and that a meritorious petition for rehearing will be granted whether or not filed within the period set out in Rule 33 in which petitions for rehearing may be filed as of right. We believe the accompanying petition for rehearing shows meritorious grounds.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General

FEBRUARY, 1951.

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334 U.S. 541; *Grand River Dam Authority* v. *Grand-Hydro Inc.*, 332 U.S. 841, 333 U.S. 852, 335 U.S. 359, 362; *Jungersen* v. *Ostby & Barton Co.*, 332 U.S. 851, 852, 333 U.S. 825, 334 U.S. 835, 335 U.S. 560, 562; *McGrath* v. *Manufacturers Trust Co.*, 335 U.S. 910, 337 U.S. 953, 338 U.S. 241, 242; *Eichenlaub* v. *Shaughnessy*, 335 U.S. 867, 337 U.S. 955, 338 U.S. 521.

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND S. MCKEOGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN AND J. K. CARSON, JR., Former Members of the United States Maritime Commission,

PETITIONERS

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., and H. M. LORBER

PETITION FOR REHEARING OF DENIAL OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

On November 13, 1950, this Court denied (340 U. S. 884) a petition for a writ of certiorari which presented (pp. 2-3) the following two questions (along with a third reserved in the event the writ were granted):

1. Whether this suit is an unconsented suit against the United States.

2. Whether the Court below, under Rule 52(a) of the Federal Rules of Civil Procedure, properly set aside the finding of the District Court that the

1938 transfer of the common stock of Dollar of Delaware was a sale and not a pledge.

The Solicitor General, on behalf of Emory S. Land and other former members of the United States Maritime Commission, prays that this denial be reconsidered and that the petition for a writ of certiorari be granted, on the grounds originally presented, and also upon the following substantial grounds (a) not previously presented, and (b) arising out of intervening circumstances.

REASONS FOR GRANTING THIS PETITION FOR REHEARING AND FOR GRANTING THE WRIT

I

Petitioners recognize that this Court does not ordinarily view a petition for rehearing with favor, and such a petition should be filed only in cases of real merit. We believe this to be such a case. In our view, there is (1) a square procedural precedent for a petition for rehearing in the present posture of this case, and (2) a large body of precedent for a revision by this Court, on petition for rehearing, of an original decision that a case was not of sufficient importance or worth to warrant a writ of certiorari.

1. *Kellogg Co.* v. *Nat. Biscuit Co.*, 305 U. S. 111, 115-116, was the culmination of a suit by National Biscuit to enjoin unfair Shredded Wheat competition by Kellogg. Judgment for Kellogg was reversed by the Circuit Court of Appeals for the

Third Circuit, 91 F. 2d 150. Kellogg was denied certiorari and rehearing in October and November, 1937. 302 U. S. 733, 777. A petition to stay the injunction was denied in December 1937. 302 U. S. 654. The District Court entered its decree in January, 1938. National Biscuit asked the Court of Appeals for clarification of its mandate, since Kellogg construed the decree to leave it free to use the name Shredded Wheat. In May, 1938, the Court of Appeals directed an unambiguous decree for National Biscuit. 96 F. 2d 873. Kellogg sought certiorari from this decision clarifying the mandate and filed also a second petition for rehearing of the earlier denial of certiorari on the merits. Because of a Privy Council decision for Kellogg, after the earlier denial of certiorari, the Court on May 31, 1938, granted both petitions. 304 U. S. 586; see 305 U. S. at 115-116.

In the present case, the proceedings in the District Court and the Court of Appeals subsequent to this Court's denial of certiorari last November (set forth in the accompanying petition in No. 552, this Term) show with great clarity that it is not easy to put in practice the decision of this Court in *Land* v. *Dollar,* 330 U. S. 731. The courts below purported to give respondents a judgment against the individual defendants which has practical value and at the same time conforms to the thrice-repeated holding of this Court that the decision cannot be *res judicata* against the United States

(330 U. S. at 736, 737, 739), as well as to the principle that relief cannot be awarded against the sovereign (*Larson* v. *Domestic & Foreign Corp.*, 337 U. S. 682, 688). The accompanying petition in No. 552 shows that they have succeeded only in jettisoning the established rights of the United States. As in *Kellogg*, this petition and that in No. 552 should both be granted so that the Court may have before it the whole case.[1]

2. There is, of course, no comparably close precedent on the merits or importance of the issues in the case. But, in asking this Court to reconsider its denial of the original petition, it seems appropriate to note that a survey commencing with the October 1934 Term indicates that this Court has on some 25 occasions granted a petition for rehearing of a denial of a petition for writ of certiorari on grounds which seem to include a revised judgment as to the importance of the case and the need for determination by this Court.[2] It has taken this

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[1] Although the opinion of the court below which was the subject of the petition for certiorari filed in October 1950, expressly passed over the question whether the Maritime Commission had statutory authority to acquire absolute ownership of the stock (R. 2147), and even noted that the Commission's claim "has strong basis" (R. 2147), the opinion filed below on January 31, 1951, states that the earlier opinion held that the Commission had no such power—thus injecting a new and important question which was not previously presented to this Court. See Pet. in No. ——, at pp. ——.

[2] *Schriber Co.* v. *Cleveland Trust Co.*, 303 U.S. 639, 667, 304 U.S. 587, 305 U.S. 47, 50; *Graves* v. *Elliott*, 302 U.S. 731, 305

action both before and after the 1947 revision of Rule 33 (332 U. S. 857). None of the cases seems to involve an intervening conflict of decision.[3]

U.S. 667, 307 U.S. 383, 386; *Drivers Union* v. *Meadowmoor Co.*, 308 U.S. 596, 637, 310 U.S. 655, 312 U.S. 287; *Exhibit Supply Co.* v. *Ace Corp.*, 314 U.S. 637, 705, 315 U.S. 126, 128; *Pickett* v. *Union Terminal Co.*, 313 U.S. 591, 314 U.S. 704, 315 U.S. 386, 390; *Goldman* v. *United States*, 313 U.S. 588, 314 U.S. 704, 316 U.S. 129; *United States* v. *Nunnally Investment Co.*, 313 U.S. 584, 314 U.S. 705, 316 U.S. 258; *Helvering* v. *Cement Investors*, 315 U.S. 802, 803, 825, 316 U.S. 527; *Fisher* v. *Whiton*, 316 U.S. 691, 707, 317 U.S. 217, 219; *Buchalter* v. *New York*, 318 U.S. 766, 797, 319 U.S. 427, 429; *McCullough* v. *Kammerer Corp.*, 322 U.S. 739, 766, 323 U.S. 327; *Robinson* v. *United States*, 323 U.S. 789, 808, 324 U.S. 282; *Colorado Interstate Co.* v. *Power Commission*, 323 U.S. 700, 807, 324 U.S. 581; *Panhandle Co.* v. *Power Commission*, 323 U.S. 700, 808, 324 U.S. 635; *Fitzgerald Co.* v. *Pedersen*, 323 U.S. 698, 807, 324 U.S. 720; *Hickman* v. *Taylor*, 327 U.S. 808, 328 U.S. 876, 329 U.S. 495, 500; *Gardner* v. *New Jersey*, 328 U.S. 850, 876, 329 U.S. 565; *Zap* v. *United States*, 326 U.S. 777, 802, 328 U.S. 624, 329 U.S. 824, 330 U.S. 800; *Madison Ave. Corp.* v. *Asselta*, 329 U.S. 764, 817, 331 U.S. 199; *Interstate Gas Co.* v. *Power Commission*, 329 U.S. 802, 330 U.S. 852, 331 U.S. 682; *Estin* v. *Estin*, 332 U.S. 760, 840, 334 U.S. 541; *Grand River Dam Authority* v. *Grand-Hydro, Inc.*, 332 U.S. 841, 333 U.S. 852, 335 U.S. 359, 362; *Ludecke* v. *Watkins*, 332 U.S. 853, 333 U.S. 865, 335 U.S. 160; *Eichlenlaub* v. *Shaughnessy*, 335 U.S. 867, 337 U.S. 955, 338 U.S. 521.

[3] The Solicitor General in November 1950 stated that the importance of the issue in this case did not alone warrant a petition for rehearing. Since that statement (a) the courts below have become entangled in their efforts to give an effective judgment within the limits of their jurisdiction (see *supra*, pp. 7-8, *infra*, pp. 19-20), and (b) the national interest in the continued existence and efficient management of the line has considerably increased, and the potentialities for harm to the public interest if respondents should return to management have been clarified (see R. in No. 552, R. 24-29, *infra*,

II

Petitioners believe this case to be one where the substantive issues, while unique, are of sufficient importance to warrant review by this Court. The decision below is, in our view, a serious miscarriage of justice, and undertakes to confer control of one of the nation's major shipping lines on those whose only claim to the stock, as we see it, is that they first wrecked the line and then sold the stock.

The Dollar Line (Dollar of Delaware, in which Dollar of California was a large stockholder) was in serious financial difficulties from 1932 on.[4] Its difficulties were accentuated by the termination of the mail contracts in 1937 and the maritime strike of that year, but the Maritime Commission was of the view that its basic problems arose out of the facts "that the management was shockingly incompetent", and "that the real interest of the Dollars is in the Robert Dollar Company, the managing operator of the Dollar Steamship Lines, Inc., Ltd., and in other corporations which render service of one kind or another to the ships of the Dollar

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pp. 18-19). The same statement indicated that the United States would continue to assert its right to the stock in every way open to it.

[4] U. S. Maritime Commission, Reorganization of American President Lines, Ltd. (1939), p. 16. This report was put in evidence by the court (R. 406-11, 2000-1) and may be referred to as though printed on appeal (R. 282). It is hereafter cited as the "1939 Report."

Line."[5] By 1938, the Dollar Line was indebted to the United States in the amount of about $7,500,000; of this debt R. Stanley Dollar was surety to the amount of about $1,800,000 and Dollar of California to the amount of about $3,600,000 (R. 2148). In 1938, as the district court found, "its position was desperate and bordering on the completely disastrous" (R. 261); as the Court of Appeals held, the stock "had little or no market value" (R. 2150).[6]

For more than a year the Maritime Commission and the respondents were in negotiations looking to new financing, both from the Commission and respondents themselves. In June 1938, the negotiations turned toward the objective of acquiring ownership (or, according to respondents, voting control) of the stock (R. 262, 2151). Under an agreement dated August 15, 1938 (R. 32-50), re-

[5] 1939 Report, *supra* fn. 4, at pp. 21, 24. In 1932, for example, the Dollar Lines lost over $1,000,000 while profits and executive salaries of the Robert Dollar Company were about $200,000. R. Stanley and J. Harold Dollar, Lorber and Fleishhacker in 1932 got from all the Dollar controlled group concerned with the Dollar Lines, about $335,000. The receipts of these 4 men from these companies had averaged $622,000 a year for the preceding 5 years. *Id* p. 16.

[6] By July 1938, Dollar of Delaware had $20,000 in cash with which to pay $2,500,000 in current accounts, three of its vessels had been libelled for repair bills, and only 6 of its 13 vessels were making voyages (R. 1065, 1111-2, 1281-2). It needed a total of $4,000,000 for repairs and working capital, and had lost $1,870,000 in the first 7 months of 1938 (R. 930, 1286, 1631).

spondents transferred to the Maritime Commission all their common stockholdings in Dollar of Delaware, amounting to about 93% of the voting control and 72% of the stock equity.[7] In return, the Commission released R. Stanley Dollar and Dollar of California of their liability on the indebtedness of Dollar of Delaware to the United States. In consequence of the agreement, the Dollar line obtained repair and working capital loans from the Government and an operating subsidy. Respondents retained unimpaired ownership of the other Dollar enterprises and corporations, and their ownership, directly and indirectly, of about 16,000 shares of preferred stock in Dollar of Delaware, plus about 11,000 shares owned by the Fleishhacker-controlled Anglo-California bank, with an aggregate par value of about $2,700,000 (R. 1715-1718). The executors of the estate of J. Harold Dollar (with no direct benefit from the release of liability) asked authority to "transfer all right, title and interest" in the stock to the Commission because the transaction would increase the value of its other holdings in the Dollar Corporations "many times that of the value of the Class 'A' stock of Dollar" of Delaware (R. 1469, 1470).

Thereafter, Dollar of Delaware changed its name to the American President Lines, Ltd., new management was installed, and a $2,000,000 repair loan and a $2,500,000 working capital loan were

[7] 1939 Report, pp. 62-63.

advanced.[8] By October 1943, American President Line had repaid all its debt to the United States (R. 263, 2149). When the Commission in 1945 offered the stock for sale bids were received in excess of $8,000,000 (R. 30).

The August 15, 1938, agreement required the owners of the stock to "transfer, or cause to be transferred, to the Commission, or its nominee, free and clear of all liens and incumbrances" the unpledged stock owned by them, and to transfer to the Commission or its nominee "all rights and interests of the pledgor" in the remaining stock "subject to existing pledges." (R. 34-36). The first phrase would seem by ordinary reading to constitute words of sale.[9] The second phrase would seem incontestably to amount to sale of title, and respondents have never suggested the two classes of stock were on any different footing. The Agreement contains no words of defeasance and is wholly silent as to any condition under which the stock would be returned to respondents.

If the 1938 Agreement were intended as a pledge of the stock of this Delaware corporation, there has been a curious inattention to controlling statutes. Section 16 of the Delaware Corporation Law provides:

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[8] 1939 Report, pp. 280, 282, 284, R. 1715.

[9] We note that respondents in their complaint in this very case themselves use the unadorned word "transfer" as the equivalent of sale (R. 5).

> Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

Again, if this were a mere pledge, one wonders at the respondents' forbearance in allowing the Maritime Commission wholly to displace Dollar management in 1938 and ever since to assume full voting rights in the stock. Section 18 of the Delaware Corporation Law provides that:

> * * * persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote there on * * *.

See *Italo Petroleum Corp.* v. *Producers Oil Corp.*, 20 Del. Ch. 283, 174 Atl. 276, 280; *Gow* v. *Consolidated Coppermines Corp.*, 19 Del. Ch. 172, 165 Atl. 136, 148. It seems evident that these Delaware statutes have been ignored by respondents and the Commission alike for the simple reason that they have no application to a sale of stock.

The Commission has from the beginning construed the 1938 Agreement to be the sale of the stock.[19] Indeed, it issued a press release on August

[19] 1939 Report, e.g., 50-52, 55, 61-69; Annual Reports for 1938 (p. 11) and 1939 (p. 10). Acquisition of title was a fundamental requirement of the transaction since "The Commission did not consider it appropriate in extending financial aid to maintain an essential foreign trade route, to create common stock equity values in favor of persons who were un-

19, 1938, describing the "transfer to the commission of absolute title;" this was mailed by Dollar's Washington office to R. Stanley Dollar and was reflected the next day in full length stories in the San Francisco papers, stating the Commission was acquiring "absolute title" to the stock (R. 1506-7, 1836-9, 2096-2112, 2150). Neither R. Stanley Dollar nor any other party challenged this interpretation. Instead they thereafter voluntarily extended the time for completion and then consummated the transaction.[11]

Each of the four respondents was, for his part, of the same view that the stock had been sold in 1938: their attorney at the closing delivered an opinion that the endorsed stock certificates and the bill of sale of certain physical property "will convey to the Commission and to Dollar of Delaware, respectively, valid title to the shares of stock and the physical property covered by such instruments of transfer."[12] It is unthinkable that a competent attorney would thus jointly describe a pledge (of the stock) and a sale (of the physical property). R. Stanley Dollar took a capital loss in his 1938 income tax return (submitted under his oath) because he had by the 1938 Agreement transferred "all his right, title and interest" to the stock (R. 1177-86, 1492, 2150). Respondent Lorber in his

willing themselves to assume any financial obligations whatever." 1939 Report, p. 61; R. 1639.

[11] 1939 Report, p. 138; R. 352, 359, 1433-42.

[12] 1939 Report, 157, 159.

1938 tax return took the same capital loss and his agent specified the same reason (R. 1760-9). Dollar of California in 1938 dropped from its balance sheet the Dollar of Delaware common stock (which in 1937 represented 2/3 of its book assets); the balance sheet was approved by the stock-holders (R. 1513-6, 1521-2). The Robert Dollar Company has succeeded to the interest of the J. Harold Dollar estate, the executors of which (including Ferguson, the respondents' attorney at the closing) after signing the adjustment agreement petitioned the probate court for and obtained approval of this *sale* of the stock (R. 50, 292, 1463-70, 1476-79).[13]

In 1940, R. Stanley Dollar began to take action looking to regaining control of the line; his attorney, in a letter examined by Dollar before it was sent, then pursued the theory that the Commission had no authority to "own the stocks," especially as it had acquired the stock for inadequate consideration to the "former stockholders." Dollar in writing his attorney described respondents as "former owners" of the stock (R. 1486-1489). The earliest date shown by this record when any respondent took the view that the 1938 Agreement was a mere pledge of the stock was in July 1945 (R. 9).

[13] The court below relies upon the fact that the word "sale" appears only in the title (R. 2155) and passes over the fact that "transfer all right, title and interest" appears both in the petition and the order (R. 1470, 1478).

The court below nevertheless overrode the apparently plain meaning of the August 1938 Agreement and the formal consistent conduct of the parties because (a) the Commission had the stock recorded in the name of the Commission rather than that of the United States, and (b) of the general equitable character of the transaction (R. 2152-3).[14] The first ground seems to us a trifling and explicable[15] technicality. And to reach the somewhat astounding result that the general equities favored construction of this agreement as a pledge, the court was forced to put the Commission into the position of a lending institution which simply holds the collateral in its vaults and then, when the debt is paid by the efforts of the debtor, insists that it owns the securities (R. 2153-4, 2157). Here, the Commission changed the name

[14] In its recent opinion of January 31, 1951, the court below said that it had also held the Commission powerless to acquire the stock, despite the express reservation of that issue in the earlier opinion. See footnote 1, *supra*, p. 8. This new issue is dealt with in the accompanying petition in No. 552, at pp. 18-19.

[15] The General Counsel of the Commission relied upon the statutory powers of the Commission "to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract," to reach the conclusion that "the Commission may legally acquire this stock." 1939 Report, p. 105. It was natural therefore to place record title in the Commission as such. And the governing statute contemplates that the Commission shall deposit money in the Treasury but itself hold other types of property. Sections 202 and 206 of the Merchant Marine Act of 1936 as amended (46 U.S.C. Secs. 1112, 1116).

of the line (as provided, at Dollar's insistence, in the Agreement), advanced another $4,500,000 in addition to the $7,500,000 outstanding, installed new management, and through that management has rebuilt the line into a prosperous and efficient concern. The respondents, in contrast, have in the years since 1938 contributed nothing to the affairs of the American President Lines except, in recent years, to claim ownership of its stock. (See also the original petition herein, at pp. 3-10, 20-25).

III

We believe there exists some presumption of public importance to a decision which, if put into effect, would confer at public expense a windfall which, in 1945, was in excess of $8,000,000 (R. 30), and is presumably of greater value today. But the issue actually goes considerably beyond the amounts and the equities involved.

The American President Lines is the oldest established American-flag operator to the Orient, and the only one conducting a combined passenger-freight service. Even in times of peace, it would be a serious matter if this stock should be placed in the hands of respondents: "Should inefficient management replace the existing management * * * the Federal Maritime Board could not make statutory findings required as a condition precedent to subsidizing the line and grave danger exists that this important unit of the American Merchant Marine may deteriorate as it did before" (R. in No. 552, at 28).

It cannot be forgotten that by 1938 the Dollar line had, under respondents' management, been driven into insolvency. *Supra*, pp. 10-11.

The grave potentialities of the decision below are accentuated by the present international tensions: virtually all of the Lines' unbooked trans-Pacific cargo space has been preempted west-bound by the Military Sea Transport Service of the Navy and east-bound by the Emergency Procurement Service. It is true that the Government could, if it chose, requisition the vessels and turn them over to another operator as agent, but this is a very expensive expedient both in terms of money and in terms of disrupting the present efficient and badly needed organization. We suggest that, before the Government be driven to such a step, it is appropriate for this Court to examine the case to determine if there be legitimate need to incur costs so large as these.

IV

There has been filed, concurrently with this motion and petition, a petition for writ of certiorari to the court below in *Land et al.* v. *Dollar et al.*, No. 552, this Term. That petition explores the admittedly "paradoxical" judgment reached below, and the contradictions and anomalies which have developed in the effort of the lower courts to give respondents an effective judgment against

individual "tortfeasors" while yet adhering to the thrice-repeated injunction in *Land* v. *Dollar,* 330 U.S. 731, 736, 737, 739, that the suit cannot be *res judicata* against the United States, and to the doctrine that relief cannot be granted against an agent of the sovereign, acting as such.

These questions are substantial and important, and should, we suggest, be reviewed in connection with the entire case. In the first place, as the jurisdictional issues turn on the merits (330 U.S. at 739), we do not believe those complexities could survive an examination of the merits. Cf. *Brooks* v. *Dewar,* 313 U.S. 354, 359, 360. In the second place, we should suppose those jurisdictional issues, if they should be reached, would be in a more satisfactory posture if they arose on the solid foundation of the whole case rather than as an abstract inquiry into the jurisdictional limitations upon the form of judgment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for rehearing and the petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General

FEBRUARY, 1951.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that said petition is in my opinion re-

stricted to the grounds specified in Rule 33 of this Court.

PHILIP B. PERLMAN,
Solicitor General

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 353

EMORY S. LAND, EDWARD MACAULEY, JOHN M. CARMODY, RAYMOND S. McKEOUGH, WILLIAM W. SMITH, RICHARD PARKHURST, GRENVILLE MELLEN and J. K. CARSON, JR.,

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Respondents.

Respondents' Brief in Opposition to Motion for Leave to File a Petition for Rehearing of Denial of Petition for Writ of Certiorari

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